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TRANSMITTAL OF APPEAL BRIEF (Large Entity)

Docket No.
112703-295

In Re Application Of: Barton et al.

Application No.	Filing Date	Examiner	Customer No.	Group Art Unit	Confirmation No.
10/713,333	November 13, 2003	K. Frech	29156	2876	9875

Invention: APPARATUS AND METHOD FOR PROVIDING POINT OF PURCHASE PRODUCTS

COMMISSIONER FOR PATENTS:

Transmitted herewith in triplicate is the Appeal Brief in this application, with respect to the Notice of Appeal filed on February 1, 2005

The fee for filing this Appeal Brief is: \$500.00

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- The Director has already been authorized to charge fees in this application to a Deposit Account.
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Dated: March 25, 2005

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THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant(s): Barton et al.
Appl. No.: 10/713,333
Conf. No.: 9875
Filed: November 13, 2003
Title: APPARATUS AND METHOD FOR PROVIDING POINT OF PURCHASE
PRODUCTS
Art Unit: 2876
Examiner: K. Frech
Docket No.: 112703-295

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' APPEAL BRIEF

Sir:

Appellants submit this Appeal Brief in support of the Notice of Appeal filed on February 1, 2005. This Appeal is taken from the Final Rejection in the Office Action dated December 17, 2004.

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I. REAL PARTY IN INTEREST

The real party in interest for the above-identified patent application on appeal is Wm. Wrigley Jr. Company by virtue of an Assignment dated 2/16/05 and recorded at reel 015726, frame 0110 in the United States Patent and Trademark Office.

II. RELATED APPEALS AND INTERFERENCES

Applicants filed a Notice of Appeal on November 20, 2003 and an Appeal Brief on January 19, 2004 for U.S. Pat. Application Serial No. 09/960,915, which is a parent application of the currently appealed application. Applicants filed a Notice of Appeal on February 1, 2005 and an Appeal Brief on April 1, 2004 for U.S. Pat. Application Serial No. 10/691,806, which is a divisional of U.S. Pat. Application Serial No. 09/960,915.

III. STATUS OF CLAIMS

Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110 are pending in the above-identified patent application. Claims 15, 25, 44-68, 85-89 and 94-101 have been canceled previously. Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110 stand rejected. Therefore, Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110 are being appealed in this Brief. A copy of the appealed claims is included in the Claims Appendix.

IV. STATUS OF AMENDMENTS

No amendments were made in this application after the final rejection in the Office Action dated December 17, 2004.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A summary of the invention by way of reference to the drawings and specification for each of the independent and dependent claims is provided as follows:

Independent Claim 1 is directed to a self-scanning checkout providing point of purchase products comprising: a scanner to scan items selected by a consumer; a video monitor to display the cost of items scanned by the consumer; a packaging area for placing items scanned by the consumer into a container; and a dispenser for storing and dispensing a point of purchase product, the dispenser located at least in juxtaposition to the scanner and thereby storing point of purchase product in juxtaposition to the scanner, and wherein the video monitor displays the cost of the product dispensed by the dispenser (page 15, line 14 to page 16, line 8 and Figure 1, element 10).

Dependent Claim 2 is directed to the self-scanning checkout of Claim 1, wherein the dispenser dispenses the product into the container (page 17, lines 30-31).

Dependent Claim 3 is directed to the self-scanning checkout of Claim 1, wherein the dispenser dispenses the product adjacent to the scanner (page 17, line 31 to page 8, line 10).

Dependent Claim 4 is directed to the self-scanning checkout of Claim 1, wherein the dispenser dispenses the product adjacent to a device selected from the group consisting of: the video monitor, a change maker that makes change from payments for items and products purchased and a receipt printer that provides a receipt for items and products purchased scanner (page 17, line 31 to page 8, line 10).

Independent Claim 5 is directed to an automated checkout device comprising: a surface for allowing a customer to place a plurality of items to be purchased; a scanner for allowing the customer to accumulate a cost for the items; a second surface to support the items after they are scanned; a point of purchase device that stores and dispenses a point of purchase product onto the second surface upon request of the consumer, the point of purchase product being stored in proximity to the second surface; and the cost of the point of purchase product is added to the cost of the plurality of items automatically (page 15, line 14 to page 16, line 8, Figure 1, element 10 and page 17, line 31 to page 8, line 10).

Dependent Claim 6 is directed to the automated checkout device of Claim 5, wherein the second surface supports a container for receiving the items (page 17, line 31 to page 8, line 10).

Dependent Claim 7 is directed to the automated checkout device of Claim 6, wherein the container is a bag (page 17, lines 30-31).

Dependent Claim 8 is directed to the automated checkout device of Claim 7, wherein the point of purchase product is dispensed into the bag (page 17, lines 30-31).

Independent Claim 9 is directed to a device allowing a consumer to purchase product without the need for a cashier comprising: a body having an interior; a controller coupled to the body; a scanning device that communicates with and is coupled to the controller, the scanning device allowing a consumer to scan purchasable items that the consumer brings to the device and accumulate a cost for the items; a product maintained within the interior of the body; and the body including a dispenser that dispenses the product from the body upon a request for product by the consumer, wherein a cost for the product is added to the cost for the items and wherein the product is stored at a location that is proximate to a point of purchase (page 3, lines 16-23).

Dependent Claim 10 is directed to the device of Claim 9, wherein the controller is integral with the body (page 3, lines 24).

Dependent Claim 11 is directed to the device of Claim 9, wherein the controller is coupled to the body by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal (page 3, line 25 and page 32, lines 1-20).

Dependent Claim 12 is directed to the device of Claim 9, wherein the scanning device is coupled to the controller by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal (page 3, lines 26-27 and page 20, lines 28-31).

Dependent Claim 14 is directed to the device of Claim 9, wherein the scanning device is integral with the controller (page 3, lines 28).

Dependent Claim 16 is directed to the purchasing device of Claim 9, wherein the body includes a plurality of different products (page 4, lines 1-2).

Dependent Claim 17 is directed to the purchasing device of Claim 16, wherein the plurality of different products are selected from the group consisting of: confectionery products, periodicals, cigarette lighters, batteries, key chains, film, writing instruments, toiletries and toys (page 4, lines 1-4).

Independent Claim 18 is directed to a point of purchase device that operates with an automated purchasing device having a controller that allows a consumer to input purchasable

items and accumulate a cost for the items, the point of purchase device comprising: a body housing a product and including a member for physically coupling the point of purchase device to the automated purchasing device; and a dispenser that stores product adjacent to the automated purchasing device and dispenses the product from the body upon request by the consumer, wherein a cost for the product is added to the cost for the items (page 4, lines 5-12).

Dependent Claim 19 is directed to the point of purchase device of Claim 18, wherein the body houses a plurality of different products (page 16, lines 1-19).

Dependent Claim 20 is directed to the point of purchase device of Claim 19, wherein the plurality of different products are selected from the group consisting of: confectionery products, periodicals, cigarette lighters, batteries, key chains, writing instruments, film, toiletries and toys (page 16, lines 1-19).

Dependent Claim 21 is directed to the point of purchase device of Claim 18, wherein the body is modular and physically independent from the automated purchasing device (Abstract and page 20, lines 5-7).

Dependent Claim 22 is directed to the point of purchase device of Claim 18, wherein the member couples the body to the automated purchasing device by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal (page 36, lines 22-25, page 33, lines 11-23 and page 32, lines 8-12).

Independent Claim 23 is directed to a point of purchase device that operates with an automated purchasing device that allows a consumer to purchase items without the need for a cashier, accumulating a cost for the items and allowing the consumer to pay for a product, the point of purchase device comprising: a body housing the product, the body and thereby the product located at a point of purchase with the automated purchasing device; a controller coupled to the body; and a dispenser that dispenses the product from the body upon a signal from the controller, the signal initiated by the consumer, wherein a cost for the product is added to the cost for the items (page 4, lines 13-19).

Dependent Claim 24 is directed to the point of purchase device of Claim 23, wherein the body is modular and physically independent from the automated purchasing device (Abstract and page 20, lines 5-7).

Independent Claim 26 is directed to a point of purchase device that is coupled to a device that allows a retail operator to input purchasable items and accumulate a cost for the purchasable

items comprising: a dispenser that dispenses a product from a stock upon a signal from a controller that is coupled to the retail operator controlled device, the stock stored at least adjacent to the retail operator controlled device, the signal initiated by the retail operator, wherein a cost for the product is automatically added to the cost of the purchasable items by the controller (page 4, lines 20-25).

Dependent Claim 27 is directed to the point of purchase device of Claim 26, wherein the device is chosen from the group consisting of: a scanner, a cash register, a point of purchase kiosk and a touch screen (page 12, lines 12-17).

Dependent Claim 28 is directed to the point of purchase device of Claim 26, wherein the controller is coupled to the device by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal (page 20, lines 21-32).

Dependent Claim 29 is directed to the point of purchase device of Claim 26, wherein the controller is integral with the device (page 21, lines 10-16).

Independent Claim 30 is directed to a point of purchase device that operates with an automated purchasing device that allows a retail operator to input purchasable items and accumulate a cost for the purchasable items, the point of purchase device comprising: a body housing a stock of product the body positioned together with the automated purchasing device so that the product is stored in the proximity of the automated purchasing device; a controller maintained within the body; and a dispenser within the body that dispenses a product from the stock upon a signal from the controller, the signal initiated by the retail operator, wherein a cost for the product is automatically added to the cost for the purchasable items by the controller (page 4, line 28 to page 4, line 2).

Dependent Claim 31 is directed to the point of purchase device of Claim 30, wherein the automated purchasing device is selected from the group consisting of: a scanner and a cash register (page 12, lines 12-17).

Dependent Claim 32 is directed to the point of purchase device of Claim 30, including a display that communicates with the controller and prompts a consumer to purchase the product (page 21, lines 26-32).

Dependent Claim 33 is directed to the point of purchase device of Claim 30, wherein the body is modular and physically independent from the automated purchasing device (Abstract and page 20, lines 5-7).

Independent Claim 34 is directed to a point of purchase device that operates with a credit/debit card verification device that authorizes a cost for items purchased by a consumer, the point of purchase device comprising: a controller that communicates with the credit/debit card verification device; and the controller is coupled to a dispenser that stores and dispenses a product upon a signal to the controller, the dispenser positioned at least adjacent to the credit/debit card verification device so that product is stored proximate the credit/debit card verification, the signal initiated by the consumer through the credit/debit card verification device, wherein a cost for the product is added to the cost for the items purchased by the consumer (page 5, lines 3-10).

Dependent Claim 35 is directed to the point of purchase device of Claim 34, wherein the credit/debit card verification device is located at a retail checkout line (page 5, lines 11-12).

Dependent Claim 36 is directed to the point of purchase device of Claim 34, wherein the stock includes a plurality of different products and the controller communicates a selected product to the dispenser (page 32, lines 8-12).

Dependent Claim 37 is directed to the point of purchase device of Claim 34, wherein the controller is electrically coupled to the dispenser (page 32, lines 8-12).

Independent Claim 38 is directed to a point of purchase device comprising: a body housing a stock of product that is physically coupled to a discrete automated purchasing device that allows consumers to automatically purchase items that are physically brought to the automated purchasing device as well as purchase items that are stored in a portion of the body that is physically coupled to the discrete automated purchasing device; a money acceptor coupled to the body; and a dispenser within the body that dispenses a product from the stock upon a consumer's input of a predefined amount of money into the money acceptor (page 5, lines 13-20).

Dependent Claim 39 is directed to the point of purchase device of Claim 38, wherein the automated purchasing device is selected from the group consisting of: a scanner, a cash register and a self-scanning checkout (page 12, lines 12-17).

Dependent Claim 40 is directed to the point of purchase device of Claim 38, wherein the automated purchasing device is located at a retail outlet selected from the group consisting of: a retail checkout, a restaurant cash register and an electronic ticketing station (page 5, lines 21-23).

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Dependent Claim 41 is directed to the point of purchase device of Claim 38, wherein the money acceptor is selected from the group consisting of: a cash acceptor, a coin acceptor and a credit/debit card acceptor (page 5, lines 21-23).

Independent Claim 42 is directed to a device for dispensing consumable and non-consumable products at the same location comprising: a body; a stock of a consumable product housed within the body; a stock of a non-consumable products housed within the body; a dispenser that dispenses the consumable product; a device that totals purchase prices for consumable and non-consumable products; a payment acceptor that allows the consumer to make a single payment for the consumable and non-consumable products; and wherein at least one of the consumable product or nonconsumable product are stored in juxtaposition to the payment acceptor (page 5, lines 26-32).

Dependent Claim 43 is directed to the device of Claim 42, wherein the non-consumable product is selected from the group consisting of: movie tickets, plane tickets, periodicals, video tapes, compact disks, digital video disks and newspapers (page 6, lines 1-2).

Independent Claim 69 is directed to a system for providing point of purchase products comprising: a device for identifying costs of items and creating a purchase price for the items; means for prompting a consumer to purchase a point of purchase product; and a device for storing and dispensing the point of purchase product upon request from the consumer and for adding a cost of the point of purchase product to the purchase price, the storing and dispensing device, and thereby point of purchase product, located at least proximate to the cost identifying device (page 8, lines 17-22).

Dependent Claim 70 is directed to the system of Claim 69, wherein the means for prompting is selected from the group consisting of: an advertisement, an audio prompt, a visual prompt and a tactile prompt (page 8, lines 23 and page 22, lines 7-14).

Dependent Claim 71 is directed to the system of Claim 69, wherein the device for identifying is a scanner (page 8, lines 24).

Dependent Claim 72 is directed to the system of Claim 69, wherein the means for prompting is selected from the group consisting of: a credit/debit card device; a display device separate from the device for identifying costs and the dispensing device; and a purchasing card.

Dependent Claim 73 is directed to the system of Claim 69, including a device for accepting payment for a total purchase price including the cost of the point of purchase product and the purchase price for the items (page 8, lines 26-28).

Dependent Claim 75 is directed to the system of Claim 69, wherein the purchase price for the items is a total purchase price which occurs when the device for identifying has identified all of the items (page 8, lines 30-31).

Independent Claim 77 is directed to a device for dispensing a retail item comprising: a retail customer terminal sited proximate a point of purchase location, the retail customer terminal having an input device adapted to permit selection of a purchasable item and a point of purchase product; a retail item processor in electrical communication with the retail customer terminal and adapted to process a selection of the purchasable item and the point of purchase product; and a dispensing terminal sited proximate the point of purchase location and in electrical communication with the retail customer terminal and retail item processor, the dispensing terminal adapted to handle and dispense the point of purchase product from a storage location within the terminal to a dispensing location in response to the selection of the point of purchase product the storage location being proximate the point of purchase location (page 9, lines 1-10).

Dependent Claim 78 is directed to the device of Claim 77, wherein the dispensing terminal is further adapted to handle and dispense at least one coin as change for the retail consumer (page 9, lines 11-12).

Independent Claim 79 is directed to a retail item dispensing device comprising: a receptacle that houses and ejects a point of purchase product stored therein, the receptacle, and thereby point of purchase product, located at a point of purchase location with a customer selection input device; a dispensing location located proximate the point of purchase location, said dispensing location comprising a surface configured for carrying the point of purchase product; the customer selection input device adapted to input a customer selection of a purchasable item and point of purchase product and located proximate the point of purchase location for the purchasable item; a retail item processor in electrical communication with the input device and the receptacle that ejects the point of purchase product upon the customer selection; and a dispensing device configured to deliver the point of purchase product ejected from the receptacle to the dispensing location proximate the point of purchase location for the purchasable item (page 4, lines 13-24).

Independent Claim 80 is directed to a point of purchase device that is coupled to a device that inputs purchasable items and accumulates a cost for the purchasable items comprising: a dispenser that stores and dispenses a product, wherein a cost for the product is automatically added to the cost of the purchasable items, the dispenser, and thereby product, located at least in juxtaposition to the item input device; and a communication device that allows information relating to the product to be communicated to a remote location (page 6, lines 3-9 and page 28, lines 14-22).

Dependent Claim 81 is directed to the point of purchase device of Claim 80, wherein the dispenser dispenses products produced by a plurality of product suppliers and the communication device allows for communication with the suppliers at a plurality of remote locations (page 28, lines 14-22).

Dependent Claim 82 is directed to the point of purchase device of Claim 80, wherein the communication device communicates over a wide area network with the remote location (page 28, lines 14-22).

Dependent Claim 83 is directed to the point of purchase device of Claim 80, wherein the communication device communicates with the remote location by a mode selected from the group consisting of: the Internet, a phone line, a satellite, microwaves and radio frequency (page 28, lines 14-22).

Dependent Claim 84 is directed to the point of purchase device of Claim 80, wherein a party receives inventory information from the communication device (page 4, lines 13-19 and page 29, lines 3-12).

Independent Claim 90 is directed to a point of purchase device that is coupled to a device that inputs purchasable items and accumulates a cost for the purchasable items comprising: a dispenser that dispenses a product, wherein a cost for the product is automatically added to the cost of the purchasable items, the dispenser, with product, located at a point of purchase with the item input device; and a communication device that communicates accumulated inventory information relating to the product to a remote location (page 4, lines 13-19 and page 29, lines 3-12).

Dependent Claim 91 is directed to the point of purchase device of Claim 90, wherein the communication device automatically communicates with a party selected from the group consisting of: a supplier of the product and a distributor of the product (page 29, lines 3-12).

Dependent Claim 92 is directed to the point of purchase device of Claim 90, wherein the communication device automatically communicates inventory information selected from the group consisting of: inventory for the product reaching a predefined level, flow rates of the product and optimization data for the product (page 29, lines 3-12).

Dependent Claim 93 is directed to the point of purchase device of Claim 90, which includes an advertisement for the product which is automatically displayed based on an inventory level of the product (page 28, line 14 to page 29, line 2).

Dependent Claim 102 is directed to the self-scanning checkout of Claim 1, wherein the dispenser is housed integral with the scanner (Figure 1).

Dependent Claim 103 is directed to the point of purchase device of Claim 23, wherein the body additionally houses the automated purchasing device (Figure 1).

Dependent Claim 104 is directed to the point of purchase device of Claim 26, wherein the stock is stored in a same place with the retail operator controlled device (Figure 1).

Dependent Claim 105 is directed to the point of purchase device of Claim 30, wherein the body also houses the automated purchasing device (Figure 1).

Dependent Claim 106 is directed to the point of purchase device of Claim 34, wherein the dispenser is integral with the credit/debit card verification device (Figure 1).

Dependent Claim 107 is directed to the system of Claim 69, wherein the storing and dispensing device is housed with the cost identifying device (page Figure 1).

Dependent Claim 108 is directed to the retail item dispensing device of Claim 79, wherein the receptacle located is integral with the customer selection input device (Figure 1).

Dependent Claim 109 is directed to the point of purchase device of Claim 80, wherein the dispenser is positioned integral with the item input device (Figure 1).

Dependent Claim 110 is directed to the point of purchase device of Claim 90, wherein the dispenser is placed in a same housing with the item input device (Figure 1).

Although specification citations are given in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the Brief. There is no intention to suggest in any way that the terms of the claims are limited to the examples in the specification. As demonstrated by the citations below, the claims are fully supported by the specification as required by law. However, it is improper under the law to read limitations from the specification

into the claims. Pointing out specification support for the claim terminology as is done here to comply with rule 1.192(c) does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In short, the specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 6,550,582 to Addy et al. (“*Addy*”) in view of U.S. Patent No. 4,645,036 to Nestler (“*Nestler*”). A copy of the Final Rejection is attached as Exhibit A. A copy of *Addy* and *Nestler* is attached herewith as Exhibits B and C, respectively.

VII. GROUPING OF THE CLAIMS

Appellants argue for the separate patentability of each of the independent claims separate and apart from each other set forth in detail below pursuant to the requirements of 37 C.F.R. § 1.192(7), unless otherwise specified. In addition, Appellants argue for the patentability of the dependent claims separate and apart from the independent claims for the reasons set forth below.

VIII. ARGUMENT

A. LEGAL STANDARDS

The Federal Circuit has held that the legal determination of an obviousness rejection under 35 U.S.C. § 103 is:

whether the claimed invention as a whole would have been obvious to a person of ordinary skill in the art at the time the invention was made...The foundational facts for the *prima facie* case of obviousness are: (1) the scope and content of the prior art; (2) the difference between the prior art and the claimed invention; and (3) the level of ordinary skill in the art...Moreover, objective indicia such as commercial success and long felt need are relevant to the determination of obviousness...Thus, each obviousness determination rests on its own facts.

In re Mayne, 41 U.S.P.Q. 2d 1451, 1453 (Fed. Cir. 1997).

In making this determination, the Patent Office has the initial burden of proving a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q. 2d 1955, 1956 (Fed. Cir. 1993). This burden may only be overcome “by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings.” *In re Fine*, 837 F.2d 1071, 1074, 5 U.S.P.Q. 2d 1596, 1598 (Fed. Cir. 1988). “If the examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of the patent.” *In re Oetiker*, 24 U.S.P.Q. 2d 1443, 1444 (Fed. Cir. 1992).

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference or references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Fine*, 837 F.2d 1071, 5, U.S.P.Q.2d 1596 (Fed. Cir. 1988). Second there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986) Finally, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q., 580 (CCPA 1974).

Further, the Federal Circuit has held that it is “impermissible to use the claimed invention as an instruction manual or ‘template’ to piece together the teachings of the prior art so that the claimed invention is rendered obvious.” *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir.

1992). “One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention” *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Moreover, the Federal Circuit has held that “obvious to try” is not the proper standard under 35 U.S.C. §103. *Ex parte Goldgaber*, 41 U.S.P.Q.2d 1172, 1177 (Fed. Cir. 1996). “An obvious-to-try situation exists when a general disclosure may pique the scientist curiosity, such that further investigation might be done as a result of the disclosure, but the disclosure itself does not contain a sufficient teaching of how to obtain the desired result, or that the claim result would be obtained if certain directions were pursued.” *In re Eli Lilly and Co.*, 14 U.S.P.Q.2d 1741, 1743 (Fed. Cir. 1990).

Of course, references must be considered as a whole and those portions teaching against or away from the claimed invention must be considered. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve Inc.*, 796 F.2d 443 (Fed. Cir. 1986). “A prior art reference may be considered to teach away when a person of ordinary skill, upon reading the reference would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the Applicant.” *Monarch Knitting Machinery Corp. v. Fukuhara Industrial Trading Co., Ltd.*, 139 F.3d 1009 (Fed. Cir. 1998), quoting, *In re Gurley*, 27 F.3d 551 (Fed. Cir. 1994).

B. THE REJECTION OF CLAIMS 1-14, 16-24, 26-43, 69-84, 90-93 AND 102-110
UNDER 35 U.S.C. §103(a) TO ADDY AND NESTLER SHOULD BE REVERSED
BECAUSE THE PATENT OFFICE HAS NOT ESTABLISHED A PRIMA FACIE
CASE OF OBVIOUSNESS

1. The Cited References

Appellants respectfully submit that the obviousness rejection of Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110 should be reversed because the Patent Office fails to establish a *prima facie* case of obviousness. Regarding Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110, the Patent Office in the Final Office Action dated 12/17/2004 (“Office Action”) at page 2 alleges that the combination of *Addy* and *Nestler* renders obvious the claimed invention. However, the Patent Office fails to establish a *prima facie* case of obviousness in each rejection because there is no teaching or suggestion within the references cited or within the general knowledge of those skilled in the art that would have led one skilled in the art to make the

combination suggested and the cited references fail to teach or suggest every element of the claimed invention. Further, in many instances, the Patent Office has not even attempted to provide specific support from the cited references for many novel elements of the claimed invention.

The following discusses in more detail the deficiencies of *Addy* and *Nestler* regarding the present claims.

2. There is no suggestion or motivation to combine the cited references to arrive at Appellants' claimed invention

The obviousness rejection is not proper because the combination of the references is taught away from by each of the references as the proposed combination would destroy each of the alleged inventions and there is no motivation for the combination of the references. Generally, the Patent Office's basis of the rejection is that *Addy* "discloses a typical supermarket checkout counter with a pre-scan area 12, and itemization area 14, a payment area 16, and a post-scan area 18." *Nestler* "discloses a product dispenser at a checkout counter and its associated control elements...[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to include the product dispenser of *Nestler* with the checkout counter of *Addy*. As clearly taught by *Nestler*, this would be useful for discouraging theft and provide easy access to the checkout clerk or store patron at checkout." See, Office Action, pages 2-3.

The Office Action must, it is respectfully submitted, mischaracterize the *Nestler* reference in order to even attempt to make out an obviousness rejection. In this regard, Appellants note that *Nestler* does not "provide easy access to the...store patron at checkout" as alleged by the Patent Office. See, Office Action, page 3. On the contrary, the dispenser of *Nestler* is designed for use by the store operator only. See, *Nestler*, column 5, line 49 and Abstract. *Nestler* fails to disclose anywhere in the specification of providing access to the product dispenser by the store patron or consumer. In fact, the *Nestler*'s invention teaches away from patron access to the product dispenser because the primary object of the invention is to prevent the theft of easily concealable consumer products. See, *Nestler*, column 2, lines 39-41 and column 4, lines 9-13. Thus, *Nestler* actually teaches away from being combined with the automatic checkout of *Addy*.

Moreover, the alleged combination of the two references is currently based on an improper hindsight reconstruction of the claimed invention. One requires no retail operator and the other requires a retail operator. For example, the purpose of *Addy* is to reduce employees. “What is particularly needed is a self-service checkout terminal which allows the customer to checkout a relatively large item order without intervention from retail personnel.” See, *Addy*, column 2, lines 17-20. Indeed, it is an object of the invention of *Addy* to provide a self-service checkout terminal which allows a customer to checkout without any intervention from retail personnel. See, *Addy*, column 3, lines 44-52. In contrast, *Nestler* relates to a device that is designed specifically for and requires a clerk’s intervention in order to obtain certain products. Combining *Nestler* with *Addy* would obviate the objective and inventive necessity of *Addy*. Accordingly, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). As a result, the two references teach away from the proposed combination suggested by the Patent Office.

Finally, the alleged motivation for the combination from within the cited references is also lacking. In a self-service checkout counter such as that disclosed in *Addy*, as noted in Appellants’ patent application, no point of purchase products are provided. For instance, the figures or written specification of *Addy* do not even illustrate or suggest any point of purchase products. Indeed, the issues of theft and storage that are specifically addressed by *Nestler* are not present in *Addy*. Further, *Nestler* fails to disclose or suggest the need for or use of a self-service checkout counter. As discussed above, such a device would be inapplicable to *Nestler*. Therefore, no motivation exists to combine *Addy* with *Nestler* to form the claimed invention.

3. *Addy* and *Nestler* Alone or in Combination Fail to Disclose or Suggest a Number of Claimed Features

i. Independent Claim 1

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 1 requires, in part, a dispenser for storing and dispensing a point of purchase product, the dispenser located at least in juxtaposition to the scanner and thereby storing point of purchase product in juxtaposition to the scanner. *Addy* and *Nestler* fail to

disclose or suggest this feature. In fact, *Addy* and *Nestler* fail to disclose or suggest anywhere in the specification a dispenser with point of purchase products located in juxtaposition with a scanner. Claim 1 also requires a monitor wherein the video monitor displays the cost of the product dispensed by the dispenser. *Addy* fails to disclose a video monitor displaying the cost of the dispensed product. *Nestler* fails to even disclose or suggest any video monitor display. For these reasons, the obviousness rejection of Claim 1 is improper.

ii. Dependent Claim 2

Claim 2 that depends from Claim 1 is also allowable for at least substantially the same reasons as Claim 1. In addition, Claim 45 claims the self-scanning checkout of Claim 1, wherein the dispenser dispenses the product into the container, which is not disclosed in *Addy* or *Nestler*. For example, *Addy* fails to disclose or suggest any dispenser. *Nestler* fails to disclose or suggest any kind of container for a dispenser to dispense a product into. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 1.

iii. Independent Claim 5

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 5 requires, in part, a point of purchase device that stores and dispenses a point of purchase product onto the second surface upon request of the consumer and the cost of the point of purchase product is added to the cost of the plurality of items automatically. *Addy* fails to disclose or suggest point of purchase products or a dispenser involving same. *Nestler* fails to disclose or suggest automatically adding the costs of the dispensed product and the scanned product (i.e. without the aid of a checkout clerk). For these reasons, the obviousness rejection of Claim 5 is improper.

iv. Dependent Claim 8

Claim 8 that depends from Claim 5 is also allowable for at least substantially the same reasons as Claim 5 as previously discussed. In addition, Claim 8 claims the automated checkout device of Claim 5, wherein the point of purchase product is dispensed into a bag, which is not disclosed in *Addy* or *Nestler*. For example, *Addy* fails to disclose or suggest any point of purchase product. *Nestler* fails to disclose or suggest any kind of bag for a point of purchase product to be dispensed into. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 5.

v. Independent Claim 9

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 9 requires, in part, a device with a body including a dispenser, controller coupled to the body and a scanning device that communicates with and is coupled to the controller. *Addy* and *Nestler* fail to disclose or suggest the claimed feature of a dispensing device with a controller that communicates with a scanning device. Claim 9 also requires the body includes a dispenser that dispenses the product from the body upon a request for product by the consumer, wherein a cost for the product is added to the cost for the items. *Addy* fails to disclose or suggest a dispenser. *Nestler* fails to disclose or suggest adding the costs of the dispensed product and scanned product. For these reasons, the obviousness rejection of Claim 9 is improper.

vi. Dependent Claim 11

Claim 11 that depends from Claim 9 is also allowable for at least substantially the same reasons as Claim 9 as discussed previously. In addition, Claim 11 claims the device of Claim 9, wherein the controller is coupled to the body by a mode selected from the group consisting of electrical coupling, optical coupling and coupling via a radio frequency signal. None of these elements are disclosed in *Addy* or *Nestler*. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 9.

vii. Dependent Claim 12

Claim 12 that depends from Claim 9 is also allowable for at least substantially the same reasons as Claim 9 as discussed previously. In addition, Claim 12 claims the device of Claim 9, wherein the scanning device is coupled to the controller by a mode selected from the group consisting of electrical coupling, optical coupling and coupling via a radio frequency signal. None of these elements are disclosed in *Addy* or *Nestler*. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 9.

viii. Independent Claim 18

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 18 requires, in part, a member for physically coupling the point of purchase device to the automated purchasing device. *Addy* and *Nestler* fail to disclose or suggest same. Claim 18 also recites a dispenser that stores product adjacent to the automated purchasing device and dispenses the product from the body upon request by the consumer, wherein a cost

for the product is added to the cost for the items. *Addy* fails to disclose or suggest a dispenser. *Nestler* fails to disclose or suggest a dispenser that adds the costs of the dispensed product and purchased items. For these reasons, the obviousness rejection of Claim 18 is improper.

ix. Dependent Claim 22

Claim 22 that depends from Claim 18 is also allowable for at least substantially the same reasons as Claim 18 as discussed previously. In addition, Claim 22 claims the point of purchase device of Claim 18, wherein the member couples the body to the automated purchasing device by a mode selected from the group consisting of electrical coupling, optical coupling and coupling via a radio frequency signal. None of these elements are disclosed in *Addy* or *Nestler*. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 18.

x. Independent Claim 23

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 23 requires, in part, a controller coupled to the body of the point of purchase device and a dispenser that dispenses the product from the body upon a signal from the controller, the signal initiated by the consumer, wherein a cost for the product is added to the cost for the items. *Addy* and *Nestler* fail to disclose or suggest the elements of point of purchase device with a controller that automatically adds the cost of the dispensed product to the cost of the purchased items. For these reasons, the obviousness rejection of Claim 23 is improper.

xi. Independent Claim 26

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 26 requires, in part, a dispenser that dispenses a product from a stock upon a signal from a controller that is coupled to the retail operator controlled device, wherein a cost for the product is automatically added to the cost of the purchasable items by the controller. *Addy* fails to disclose or suggest a product dispenser. *Nestler* fails to disclose or suggest automatically adding the costs of the dispensed product and the purchasable items via a controller. For these reasons, the obviousness rejection of Claim 26 is improper.

xii. Dependent Claim 27

Claim 27 that depends from Claim 26 is also allowable for at least substantially the same reasons as Claim 26 as discussed previously. In addition, Claim 27 claims the point of purchase device of Claim 26, wherein the device is a scanner, a cash register, a point of purchase kiosk or

a touch screen. *Addy* and *Nestler* fail to disclose or suggest a point of purchase device having any of the elements. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 26.

xiii. Dependent Claim 28

Claim 28 that depends from Claim 26 is also allowable for at least substantially the same reasons as Claim 26 as discussed previously. In addition, Claim 28 claims the point of purchase device of Claim 26, wherein the controller is coupled to the device by a mode selected from electrical coupling, optical coupling or coupling via a radio frequency signal. None of these elements are disclosed in *Addy* or *Nestler*. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 26.

xiv. Independent Claim 30

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 30 requires, in part, the point of purchase device comprising a body housing a stock of product the body positioned together with the automated purchasing device so that the product is stored in the proximity of the automated purchasing device. *Addy* and *Nestler* fail to disclose or suggest same. Claim 30 also includes a dispenser within the body that dispenses a product from the stock upon a signal from the controller, wherein a cost for the product is automatically added to the cost for the purchasable items by the controller. *Addy* fails to disclose or suggest a product dispenser. *Nestler* fails to disclose or suggest automatically adding the costs of the dispensed product and the purchasable items via a controller. For these reasons, the obviousness rejection of Claim 30 is improper.

xv. Dependent Claim 32

Claim 32 that depends from Claim 30 is also allowable for at least substantially the same reasons as Claim 30 as discussed previously. In addition, Claim 32 claims the point of purchase device of Claim 30, including a display that communicates with the controller and prompts a consumer to purchase the product. *Addy* and *Nestler* fail to disclose or suggest any display prompting a consumer to purchase a point of purchase product. Thus, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 30.

xvi. Independent Claim 34

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 34 requires, in part, the point of purchase device comprising a controller that communicates with the credit/debit card verification device and is coupled to a dispenser that stores and dispenses a product upon a signal to the controller. *Addy* fails to disclose or suggest a product dispenser. *Nestler* fails to disclose or suggest a dispenser having a credit/debit card verification device. *Addy* and *Nestler* also fail to disclose or suggest automatically adding the costs of the dispensed product to the purchasable items. For these reasons, the obviousness rejection of Claim 34 is improper.

xvii. Independent Claim 38

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 38 requires, in part, a point of purchase device comprising a body housing a stock of product that is physically coupled to a discrete automated purchasing device. *Addy* and *Nestler* fail to disclose or suggest this feature. Claim 38 also recites a dispenser within the body that dispenses a product from the stock upon a consumer's input of a predefined amount of money into the money acceptor. *Addy* fails to disclose a dispenser. *Nestler* fails to disclose a consumer operated dispenser and actually teaches away from the claimed invention. For these reasons, the obviousness rejection of Claim 38 is improper.

xviii. Independent Claim 42

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 42 requires, in part, a device for dispensing a stock of a consumable product housed within the body and a stock of a non-consumable products housed within the body. Claim 42 also recites a payment acceptor that allows the consumer to make a single payment for the consumable and non-consumable products. *Addy* and *Nestler* fail to disclose or suggest any of these claimed elements. In fact, the cited references fail to even disclose or suggest housing consumable and non-consumable products together in a single dispensing device. For these reasons, the obviousness rejection of Claim 42 is improper.

xix. Dependent Claim 43

Claim 43 that depends from Claim 42 is also allowable for at least substantially the same reasons as Claim 42 as discussed previously. In addition, Claim 43 claims the device of Claim 42, wherein the non-consumable product is selected from the group consisting of movie tickets, plane tickets, periodicals, video tapes, compact disks, digital video disks and newspapers. None of these elements are disclosed or suggested within the cited references. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 42.

xx. Independent Claim 69

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 69 requires, in part, a means for prompting a consumer to purchase a point of purchase product. *Addy* and *Nestler* fail to disclose or suggest such a prompting means for point of purchase product. Claim 69 also recites a device for storing and dispensing the point of purchase product upon request from the consumer and for adding a cost of the point of purchase product to the purchase price. *Addy* and *Nestler* fail to disclose or suggest any of these elements. As discussed above, *Addy* fails to disclose or suggest a dispensing device, and *Nestler* teaches away from a consumer operated product dispensing device. For these reasons, the obviousness rejection of Claim 69 is improper.

xxi. Dependent Claim 70

Claim 70 that depends from Claim 69 is also allowable for at least substantially the same reasons as Claim 69 as previously discussed. In addition, Claim 70 claims the system of Claim 69, wherein the means for prompting is selected from the group consisting of an advertisement, an audio prompt, a visual prompt and a tactile prompt. None of these elements are even disclosed or suggested within *Addy* or *Nestler*. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 69.

xxii. Dependent Claim 72

Claim 72 that depends from Claim 69 is also allowable for at least substantially the same reasons as Claim 69 as previously discussed. In addition, Claim 72 claims the system of Claim 69, wherein the means for prompting is selected from the group consisting of a credit/debit card device; a display device separate from the device for identifying costs and the dispensing device; and a purchasing card. None of these elements are disclosed or suggested in association with a

dispensing device within *Addy* or *Nestler*. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 69.

xxiii. Independent Claim 77

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 77 requires, in part, a device comprising a retail customer terminal sited having an input device adapted to permit selection of a purchasable item and a point of purchase product and a retail item processor in electrical communication with the retail customer terminal and adapted to process a selection of the purchasable item and the point of purchase product. Claim 77 also recites a dispensing terminal site in electrical communication with the retail customer terminal and retail item processor. Neither *Addy* nor *Nestler* disclose or even suggest such an input device or retail item processor having such capabilities or interactions with a dispensing terminal. For these reasons, the obviousness rejection of Claim 77 is improper.

xxiv. Independent Claim 79

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 79 requires, in part, a receptacle that houses and ejects a point of purchase product stored therein located at a point of purchase location with a customer selection input device. Claim 79 also recites a customer selection input device adapted to input a customer selection of a purchasable item and point of purchase product and a retail item processor in electrical communication with the input device. Claim 79 also includes a receptacle that ejects the point of purchase product upon the customer selection. *Addy* and *Nestler* fail to disclose or suggest these elements. *Nestler* specifically teaches away from the present claim by requiring a retail person operated dispensing device. For these reasons, the obviousness rejection of Claim 79 is improper.

xxv. Independent Claim 80

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 80 requires, in part, a point of purchase device, wherein a cost for the product is automatically added to the cost of the purchasable items. As previously discussed, *Addy* and *Nestler* fail to disclose the feature of automatic addition of the dispensed products and purchasable items. Claim 80 also recites a communication device that allows information relating to the product to be communicated to a remote location. Neither *Addy* nor *Nestler*

disclose or arguably suggest a communication device that communicates the product information to a remote location. For these reasons, the obviousness rejection of Claim 80 is improper.

xxvi. Dependent Claim 81

Claim 81 that depends from Claim 80 is also allowable for at least substantially the same reasons as Claim 80 as discussed previously. In addition, Claim 81 claims the point of purchase device of Claim 80, wherein the dispenser dispenses products produced by a plurality of product suppliers and the communication device allows for communication with the suppliers at a plurality of remote locations. *Addy* and *Nestler* fail to disclose or suggest any such supplier communication device. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 80.

xxvii. Dependent Claim 82

Claim 82 that depends from Claim 80 is also allowable for at least substantially the same reasons as Claim 80. In addition, Claim 82 claims the point of purchase device of Claim 80, wherein the communication device communicates over a wide area network with the remote location. *Addy* and *Nestler* fail to disclose or suggest any such wide area network communication device. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 80.

xxviii. Dependent Claim 83

Claim 83 that depends from Claim 80 is also allowable for at least substantially the same reasons as Claim 80. In addition, Claim 83 claims the point of purchase device of Claim 80, wherein the communication device communicates with the remote location by a mode selected from the group consisting of the Internet, a phone line, a satellite, microwaves and radio frequency. *Addy* and *Nestler* fail to disclose or suggest any of these elements. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 80.

xxix. Dependent Claim 84

Claim 84 that depends from Claim 80 is also allowable for at least substantially the same reasons as Claim 80. In addition, Claim 84 claims the point of purchase device of Claim 80, wherein a party receives inventory information from the communication device. *Addy* and *Nestler* fail to disclose or suggest this feature. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 80.

xxx. Independent Claim 90

The cited references, alone or in combination, fail to disclose or suggest the present claim. Independent Claim 90 requires, in part, a point of purchase device comprising a dispenser that dispenses a product, wherein a cost for the product is automatically added to the cost of the purchasable items. *Addy* and *Nestler* fail to disclose the feature of automatic addition of the dispensed products and purchasable items. Claim 90 also recites a communication device that communicates accumulated inventory information relating to the product to a remote location. *Addy* and *Nestler* fail to disclose or suggest any communication device that relays inventory information to a remote location. For these reasons, the obviousness rejection of Claim 90 is improper.

xxxi. Dependent Claim 91

Claim 91 that depends from Claim 90 is also allowable for at least substantially the same reasons as Claim 90 as previously discussed. In addition, Claim 91 claims the point of purchase device of Claim 90, wherein the communication device automatically communicates with a party selected from the group consisting of a supplier of the product and a distributor of the product. *Addy* and *Nestler* fail to disclose or suggest these elements. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 90.

xxxii. Independent Claim 92

Claim 92 that depends from Claim 90 is also allowable for at least substantially the same reasons as Claim 90. In addition, Claim 92 claims the point of purchase device of Claim 90, wherein the communication device automatically communicates inventory information selected from the group consisting of inventory for the product reaching a predefined level, flow rates of the product and optimization data for the product. *Addy* and *Nestler* fail to disclose or suggest these elements. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 90.

xxxiii. Dependent Claim 93

Claim 93 that depends from Claim 90 is also allowable for at least substantially the same reasons as Claim 90 as previously discussed. In addition, Claim 93 claims the point of purchase device of Claim 90, which includes an advertisement for the product which is automatically displayed based on an inventory level of the product. *Addy* and *Nestler* fail to disclose or suggest

this feature. As a result, this claim adds limitations that are not disclosed or suggested in combination with the novel elements of Claim 90.

IX. CONCLUSION

Appellants' claimed inventions set forth in Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110 are neither disclosed, taught nor suggested by the cited references, either alone or in combination. The Patent Office has failed to establish a *prima facie* case of obviousness with respect to the rejection of the claimed invention. For the foregoing reasons, Appellants respectfully request that this Board reverse the obviousness rejection of Claims 44-68, 76 and 102-111 and pass the patent application to allowance.

Respectfully submitted,

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CLAIM APPENDIX

PENDING CLAIMS ON APPEAL OF U.S. PATENT APPLICATION SERIAL NO. 10/713,333

Claim 1 (previously presented): A self-scanning checkout providing point of purchase products comprising:

a scanner to scan items selected by a consumer;

a video monitor to display the cost of items scanned by the consumer;

a packaging area for placing items scanned by the consumer into a container; and

a dispenser for storing and dispensing a point of purchase product, the dispenser located at least in juxtaposition to the scanner and thereby storing point of purchase product in juxtaposition to the scanner, and wherein the video monitor displays the cost of the product dispensed by the dispenser.

Claim 2 (original): The self-scanning checkout of Claim 1, wherein the dispenser dispenses the product into the container.

Claim 3 (original): The self-scanning checkout of Claim 1, wherein the dispenser dispenses the product adjacent to the scanner.

Claim 4 (original): The self-scanning checkout of Claim 1, wherein the dispenser dispenses the product adjacent to a device selected from the group consisting of: the video monitor, a change maker that makes change from payments for items and products purchased and a receipt printer that provides a receipt for items and products purchased.

Claim 5 (previously presented): An automated checkout device comprising:

a surface for allowing a customer to place a plurality of items to be purchased;

a scanner for allowing the customer to accumulate a cost for the items;

a second surface to support the items after they are scanned;

a point of purchase device that stores and dispenses a point of purchase product onto the second surface upon request of the consumer, the point of purchase product being stored in proximity to the second surface; and

the cost of the point of purchase product is added to the cost of the plurality of items automatically.

Claim 6 (original): The automated checkout device of Claim 5, wherein the second surface supports a container for receiving the items.

Claim 7 (original): The automated checkout device of Claim 6, wherein the container is a bag.

Claim 8 (original): The automated checkout device of Claim 7, wherein the point of purchase product is dispensed into the bag.

Claim 9 (previously presented): A device allowing a consumer to purchase product without the need for a cashier comprising:

a body having an interior;

a controller coupled to the body;

a scanning device that communicates with and is coupled to the controller, the scanning device allowing a consumer to scan purchasable items that the consumer brings to the device and accumulate a cost for the items;

a product maintained within the interior of the body; and

the body including a dispenser that dispenses the product from the body upon a request for product by the consumer, wherein a cost for the product is added to the cost for the items and wherein the product is stored at a location that is proximate to a point of purchase.

Claim 10 (original): The device of Claim 9, wherein the controller is integral with the body.

Claim 11 (original): The device of Claim 9, wherein the controller is coupled to the body by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal.

Claim 12 (original): The device of Claim 9, wherein the scanning device is coupled to the controller by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal.

Claim 13 (original): The device of Claim 9, wherein the dispenser dispenses the product in a direction selected from the group consisting of: vertically upward, vertically downward and laterally.

Claim 14 (original): The device of Claim 9, wherein the scanning device is integral with the controller.

Claim 16 (original): The purchasing device of Claim 9, wherein the body includes a plurality of different products.

Claim 17 (original): The purchasing device of Claim 16, wherein the plurality of different products are selected from the group consisting of: confectionery products, periodicals, cigarette lighters, batteries, key chains, film, writing instruments, toiletries and toys.

Claim 18 (previously presented): A point of purchase device that operates with an automated purchasing device having a controller that allows a consumer to input purchasable items and accumulate a cost for the items, the point of purchase device comprising:

a body housing a product and including a member for physically coupling the point of purchase device to the automated purchasing device; and

a dispenser that stores product adjacent to the automated purchasing device and dispenses the product from the body upon request by the consumer, wherein a cost for the product is added to the cost for the items.

Claim 19 (original): The point of purchase device of Claim 18, wherein the body houses a plurality of different products.

Claim 20 (original): The point of purchase device of Claim 19, wherein the plurality of different products are selected from the group consisting of: confectionery products, periodicals, cigarette lighters, batteries, key chains, writing instruments, film, toiletries and toys.

Claim 21 (original): The point of purchase device of Claim 18, wherein the body is modular and physically independent from the automated purchasing device.

Claim 22 (original): The point of purchase device of Claim 18, wherein the member couples the body to the automated purchasing device by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal.

Claim 23 (previously presented): A point of purchase device that operates with an automated purchasing device that allows a consumer to purchase items without the need for a cashier, accumulating a cost for the items and allowing the consumer to pay for a product, the point of purchase device comprising:

a body housing the product, the body and thereby the product located at a point of purchase with the automated purchasing device;

a controller coupled to the body; and

a dispenser that dispenses the product from the body upon a signal from the controller, the signal initiated by the consumer, wherein a cost for the product is added to the cost for the items.

Claim 24 (original): The point of purchase device of Claim 23, wherein the body is modular and physically independent from the automated purchasing device.

Claim 26 (original): A point of purchase device that is coupled to a device that allows a retail operator to input purchasable items and accumulate a cost for the purchasable items comprising:

a dispenser that dispenses a product from a stock upon a signal from a controller that is coupled to the retail operator controlled device, the stock stored at least adjacent to the retail operator controlled device, the signal initiated by the retail operator, wherein a cost for the product is automatically added to the cost of the purchasable items by the controller.

Claim 27 (original): The point of purchase device of Claim 26, wherein the device is chosen from the group consisting of: a scanner, a cash register, a point of purchase kiosk and a touch screen.

Claim 28 (original): The point of purchase device of Claim 26, wherein the controller is coupled to the device by a mode selected from the group consisting of: electrical coupling, optical coupling and coupling via a radio frequency signal.

Claim 29 (original): The point of purchase device of Claim 26, wherein the controller is integral with the device.

Claim 30 (previously presented): A point of purchase device that operates with an automated purchasing device that allows a retail operator to input purchasable items and accumulate a cost for the purchasable items, the point of purchase device comprising:

a body housing a stock of product the body positioned together with the automated purchasing device so that the product is stored in the proximity of the automated purchasing device;

a controller maintained within the body; and

a dispenser within the body that dispenses a product from the stock upon a signal from the controller, the signal initiated by the retail operator, wherein a cost for the product is automatically added to the cost for the purchasable items by the controller.

Claim 31 (original): The point of purchase device of Claim 30, wherein the automated purchasing device is selected from the group consisting of: a scanner and a cash register.

Claim 32 (original): The point of purchase device of Claim 30, including a display that communicates with the controller and prompts a consumer to purchase the product.

Claim 33 (original): The point of purchase device of Claim 30, wherein the body is modular and physically independent from the automated purchasing device.

Claim 34 (previously presented): A point of purchase device that operates with a credit/debit card verification device that authorizes a cost for items purchased by a consumer, the point of purchase device comprising:

a controller that communicates with the credit/debit card verification device; and

the controller is coupled to a dispenser that stores and dispenses a product upon a signal to the controller, the dispenser positioned at least adjacent to the credit/debit card verification device so that product is stored proximate the credit/debit card verification, the signal initiated by the consumer through the credit/debit card verification device, wherein a cost for the product is added to the cost for the items purchased by the consumer.

Claim 35 (original): The point of purchase device of Claim 34, wherein the credit/debit card verification device is located at a retail checkout line.

Claim 36 (original): The point of purchase device of Claim 34, wherein the stock includes a plurality of different products and the controller communicates a selected product to the dispenser.

Claim 37 (original): The point of purchase device of Claim 34, wherein the controller is electrically coupled to the dispenser.

Claim 38 (previously presented): A point of purchase device comprising:
a body housing a stock of product that is physically coupled to a discrete automated purchasing device that allows consumers to automatically purchase items that are physically brought to the automated purchasing device as well as purchase items that are stored in a portion of the body that is physically coupled to the discrete automated purchasing device;
a money acceptor coupled to the body; and
a dispenser within the body that dispenses a product from the stock upon a consumer's input of a predefined amount of money into the money acceptor.

Claim 39 (original): The point of purchase device of Claim 38, wherein the automated purchasing device is selected from the group consisting of: a scanner, a cash register and a self-scanning checkout.

Claim 40 (original): The point of purchase device of Claim 38, wherein the automated purchasing device is located at a retail outlet selected from the group consisting of: a retail checkout, a restaurant cash register and an electronic ticketing station.

Claim 41 (original): The point of purchase device of Claim 38, wherein the money acceptor is selected from the group consisting of: a cash acceptor, a coin acceptor and a credit/debit card acceptor.

Claim 42 (previously presented): A device for dispensing consumable and non-consumable products at the same location comprising:

a body;
a stock of a consumable product housed within the body;
a stock of a non-consumable products housed within the body;
a dispenser that dispenses the consumable product;
a device that totals purchase prices for consumable and non-consumable products;
a payment acceptor that allows the consumer to make a single payment for the consumable and non-consumable products; and

wherein at least one of the consumable product or nonconsumable product are stored in juxtaposition to the payment acceptor.

Claim 43 (original): The device of Claim 42, wherein the non-consumable product is selected from the group consisting of: movie tickets, plane tickets, periodicals, video tapes, compact disks, digital video disks and newspapers.

Claim 69 (previously presented): A system for providing point of purchase products comprising:

a device for identifying costs of items and creating a purchase price for the items;

means for prompting a consumer to purchase a point of purchase product; and

a device for storing and dispensing the point of purchase product upon request from the consumer and for adding a cost of the point of purchase product to the purchase price, the storing and dispensing device, and thereby point of purchase product, located at least proximate to the cost identifying device.

Claim 70 (original): The system of Claim 69, wherein the means for prompting is selected from the group consisting of: an advertisement, an audio prompt, a visual prompt and a tactile prompt.

Claim 71 (original): The system of Claim 69, wherein the device for identifying is a scanner.

Claim 72 (original): The system of Claim 69, wherein the means for prompting is selected from the group consisting of: a credit/debit card device; a display device separate from the device for identifying costs and the dispensing device; and a purchasing card.

Claim 73 (original): The system of Claim 69, including a device for accepting payment for a total purchase price including the cost of the point of purchase product and the purchase price for the items.

Claim 75 (original): The system of Claim 69, wherein the purchase price for the items is a total purchase price which occurs when the device for identifying has identified all of the items.

Claim 77 (previously presented): A device for dispensing a retail item comprising:
a retail customer terminal sited proximate a point of purchase location, the retail customer terminal having an input device adapted to permit selection of a purchasable item and a point of purchase product;
a retail item processor in electrical communication with the retail customer terminal and adapted to process a selection of the purchasable item and the point of purchase product; and
a dispensing terminal sited proximate the point of purchase location and in electrical communication with the retail customer terminal and retail item processor, the dispensing terminal adapted to handle and dispense the point of purchase product from a storage location within the terminal to a dispensing location in response to the selection of the point of purchase product the storage location being proximate the point of purchase location.

Claim 78 (original): The device of Claim 77, wherein the dispensing terminal is further adapted to handle and dispense at least one coin as change for the retail consumer.

Claim 79 (previously presented): A retail item dispensing device comprising:
a receptacle that houses and ejects a point of purchase product stored therein, the receptacle, and thereby point of purchase product, located at a point of purchase location with a customer selection input device;
a dispensing location located proximate the point of purchase location, said dispensing location comprising a surface configured for carrying the point of purchase product;
the customer selection input device adapted to input a customer selection of a purchasable item and point of purchase product and located proximate the point of purchase location for the purchasable item;
a retail item processor in electrical communication with the input device and the receptacle that ejects the point of purchase product upon the customer selection; and

a dispensing device configured to deliver the point of purchase product ejected from the receptacle to the dispensing location proximate the point of purchase location for the purchasable item.

Claim 80 (previously presented): A point of purchase device that is coupled to a device that inputs purchasable items and accumulates a cost for the purchasable items comprising:

a dispenser that stores and dispenses a product, wherein a cost for the product is automatically added to the cost of the purchasable items, the dispenser, and thereby product, located at least in juxtaposition to the item input device; and

a communication device that allows information relating to the product to be communicated to a remote location.

Claim 81 (original): The point of purchase device of Claim 80, wherein the dispenser dispenses products produced by a plurality of product suppliers and the communication device allows for communication with the suppliers at a plurality of remote locations.

Claim 82 (original): The point of purchase device of Claim 80, wherein the communication device communicates over a wide area network with the remote location.

Claim 83 (original): The point of purchase device of Claim 80, wherein the communication device communicates with the remote location by a mode selected from the group consisting of: the Internet, a phone line, a satellite, microwaves and radio frequency.

Claim 84 (original): The point of purchase device of Claim 80, wherein a party receives inventory information from the communication device.

Claim 90 (previously presented): A point of purchase device that is coupled to a device that inputs purchasable items and accumulates a cost for the purchasable items comprising:

a dispenser that dispenses a product, wherein a cost for the product is automatically added to the cost of the purchasable items, the dispenser, with product, located at a point of purchase with the item input device; and

a communication device that communicates accumulated inventory information relating to the product to a remote location.

Claim 91 (original): The point of purchase device of Claim 90, wherein the communication device automatically communicates with a party selected from the group consisting of: a supplier of the product and a distributor of the product.

Claim 92 (original): The point of purchase device of Claim 90, wherein the communication device automatically communicates inventory information selected from the group consisting of: inventory for the product reaching a predefined level, flow rates of the product and optimization data for the product.

Claim 93 (original): The point of purchase device of Claim 90, which includes an advertisement for the product which is automatically displayed based on an inventory level of the product.

Claim 102 (previously presented): The self-scanning checkout of Claim 1, wherein the dispenser is housed integral with the scanner.

Claim 103 (previously presented): The point of purchase device of Claim 23, wherein the body additionally houses the automated purchasing device.

Claim 104 (previously presented): The point of purchase device of Claim 26, wherein the stock is stored in a same place with the retail operator controlled device.

Claim 105 (previously presented): The point of purchase device of Claim 30, wherein the body also houses the automated purchasing device.

Claim 106 (previously presented): The point of purchase device of Claim 34, wherein the dispenser is integral with the credit/debit card verification device.

Claim 107 (previously presented): The system of Claim 69, wherein the storing and dispensing device is housed with the cost identifying device.

Claim 108 (previously presented): The retail item dispensing device of Claim 79, wherein the receptacle located is integral with the customer selection input device.

Claim 109 (previously presented): The point of purchase device of Claim 80, wherein the dispenser is positioned integral with the item input device.

Claim 110 (previously presented): The point of purchase device of Claim 90, wherein the dispenser is placed in a same housing with the item input device.

EVIDENCE APPENDIX

Office Action dated December 17, 2004 (Exhibit A)

U.S. Patent No. 6,550,582 (“*Addy*”) cited by the Examiner in the Office Action dated December 17, 2004 (Exhibit B)

U.S. Patent No. 4,645,036 (“*Nestler*”) cited by the Examiner in Office Action dated December 17, 2004 (Exhibit C)



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,333	11/13/2003	Steven P. Barton	112703-295	9875
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FRECH, KARL D

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Office Action Summary

Application No.	Applicant(s)
10/713,333	BARTON ET AL.
Examiner	Art Unit
Karl D Frech	2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 September 2004.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-14,16-24,26-43,69-84,90-93 and 102-110 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) -14,16-24,26-43,69-84,90-93 and 102-110 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____

1. Applicant's response received September 21, 2004 has been considered.
2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.
3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
5. Claims 1-14, 16-24, 26-43, 69-84, 90-93 and 102-110 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Addy et al 6,550,582 in view of NESTLER 4,645,036. Addy discloses a typical supermarket checkout counter with a pre-scan area 12, and itemization area 14, a payment area 16 and a post-scan area 18. There is disclosed a belt assembly 20, a terminal base 28 which has a customer side and a rear

side. There is disclosed a scanner 34 for scanning typical identification codes such as UPC bar codes, and a product scale 36. There is disclosed a payment area 16 which includes a card reader and a keypad, a currency acceptor, a coin acceptor, and an optional coupon acceptor. Currency, coin and receipt dispensers are also disclosed. (see fig 1.) The bill dispenser can be considered to be a product dispenser as the bill or product is dispensed, however, this is not the intent of the bill dispenser. Nestler discloses a product dispenser at a checkout counter and its associated control elements. (see col 5 lines 52-60, fig 1). It would have been obvious to a person of ordinary skill in the art at the time of the invention to include the product dispenser of Nestler with the checkout counter of Addy. As clearly taught by Nestler, this would be useful for discouraging theft and provide easy access to the checkout clerk or store patron at checkout (see col 5 lines 45-50). Nestler does not disclose that the product dispenser is integral with the checkout counter of Addy. However, to make the two integral would have been found obvious by one of ordinary skill in the art. Doing so would make the unit more compact and more readily maintained.

6. Applicant's arguments filed 9/21/04 have been fully considered but they are not persuasive. Applicant argues that the rejection is not proper because Nestler does not "provide easy access to the ... store patron at checkout", and that Nestler's device requires a retail operator. The examiner does not disagree that Nestler requires a retail operator. However, the examiner respectfully disagrees that this renders the rejection invalid. Applicant is reminded that it is what is suggested by the combination of the references combined, and in the general knowledge of a person of ordinary skill, that

forms the basis of rejection. Addy discloses the self service shopping apparatus. Addy and Nestler are both checkout terminals in retail shopping establishments. For the reasons as set forth in the rejection above, the examiner maintains that the references are properly combined to encompass the currently claimed invention.

7. Applicant argues that the communication means is not taught in the references. A communication means is specifically recited in column 8 lines 61+ of Nestler. The examiner points out that the current claims are apparatus claims. The intended use in these apparatus claims does not carry patentable weight.

8. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

9. Applicant further generically alleges that the examiner has not provide motivation to combine the references, and that the references teach away from each other. The examiner respectfully disagrees. As seen in the rejection above, the examiner has in fact provided motivation. Although the applicant states that Addy teaches self service and Nestler teaches operator service, the applicant has not provided specific argument as why the references teach away from each other. Therefore, since the examiner has

provided motivation, and since there are no specific argument as why the references teach away from each other, the examiner maintains the rejection.

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

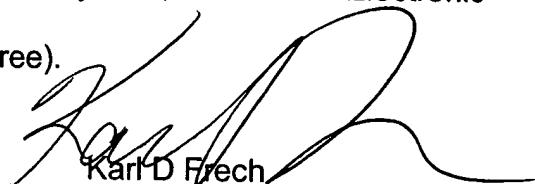
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl D Frech whose telephone number is (571) 272-2390. The examiner can normally be reached on maxi-flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (571) 272-2398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Application/Control Number: 10/713,333
Art Unit: 2876

Page 6

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Karl D. Frech
Primary Examiner
Art Unit 2876
